

City of Glendale Council Workshop & Executive Session Agenda

May 1, 2012 – 1:30 p.m.

Workshop meetings are telecast live at 1:30 p.m. on the first and third Tuesday of the month. Repeat broadcasts are telecast the first and third week of the month – Wednesday at 3:00 p.m., Thursday at 1:00 p.m., Friday at 8:30 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 2:00 p.m. on Glendale Channel 11.

Welcome!

We are glad you have chosen to attend this City Council workshop. We hope you enjoy listening to this informative discussion. At these "study" sessions, the Council has the opportunity to review and discuss important issues, staff projects and future Council meeting agenda items. Staff is present to answer Council questions. Members of the audience may also be asked by the Council to provide input.

Form of Government

Glendale follows a Council-Manager form of government. Legislative policy is set by the elected City Council and administered by the Council-appointed City Manager.

The City Council consists of a Mayor and six Councilmembers. The Mayor is elected every four years by voters city-wide. Councilmembers hold four-year terms with three seats decided every two years. Each of the six Councilmembers represent one of the six electoral districts and are elected by the voters of their respective districts (see map on back).

Workshop Schedule

Council workshops are held on the first and third Tuesday of each month at 1:30 p.m. in the Council Chambers of the Glendale Municipal Office Complex, 5850 W. Glendale Avenue, Room B-3, lower level. The exact dates of workshops are scheduled by the City Council at formal Council meetings. The workshop agenda is posted at least 24 hours in advance.

Agendas may be obtained after 4:00 p.m. on the Friday before a Council meeting, at the City Clerk's Office in the Municipal Complex. The agenda and supporting documents are posted to the city's Internet web site, www.glendaleaz.com.

Executive Session Schedule

Council may convene in "Executive Session" to receive legal advice and discuss land acquisitions, personnel issues, and appointments to boards and commissions. As provided by state statute, this session is closed to the public.

Questions or Comments

If you have any questions or comments about workshop agenda items or your city government, please call the City Manager's Office at (623) 930-2870.

If you have a concern you would like to discuss with your District Councilmember, please call (623) 930-2249, Monday - Friday, 8:00 a.m. – 5:00 p.m.

Public Rules of Conduct

The presiding officer shall keep control of the meeting and require the speakers and audience to refrain from abusive or profane remarks, disruptive outbursts, applause, protests, or other conduct which disrupts or interferes with the orderly conduct of the business of the meeting. Personal attacks on Councilmembers, city staff, or members of the public are not allowed. Engaging in such conduct, and failing to cease such conduct upon request of the presiding officer will be grounds for removal of any disruptive person from the meeting room, at the direction of the presiding officer.

Citizen Participation

The City Council does not take official action during workshop sessions; therefore, audience comments on agenda items are made only at the request of the presiding officer.



**** For special accommodations or interpreter assistance, please contact the City Manager's Office at (623) 930-2870 at least one business day prior to this meeting. TDD (623) 930-2197.**

**** Para acomodacion especial o traductor de español, por favor llame a la oficina del adminsitrador del ayuntamiento de Glendale, al (623) 930-2870 un día hábil antes de la fecha de la junta.**

Councilmembers

Norma S. Alvarez - Ocotillo District
H. Philip Lieberman - Cactus District
Manuel D. Martinez - Cholla District
Joyce V. Clark - Yucca District
Yvonne J. Knaack – Barrel District



MAYOR ELAINE M. SCRUGGS

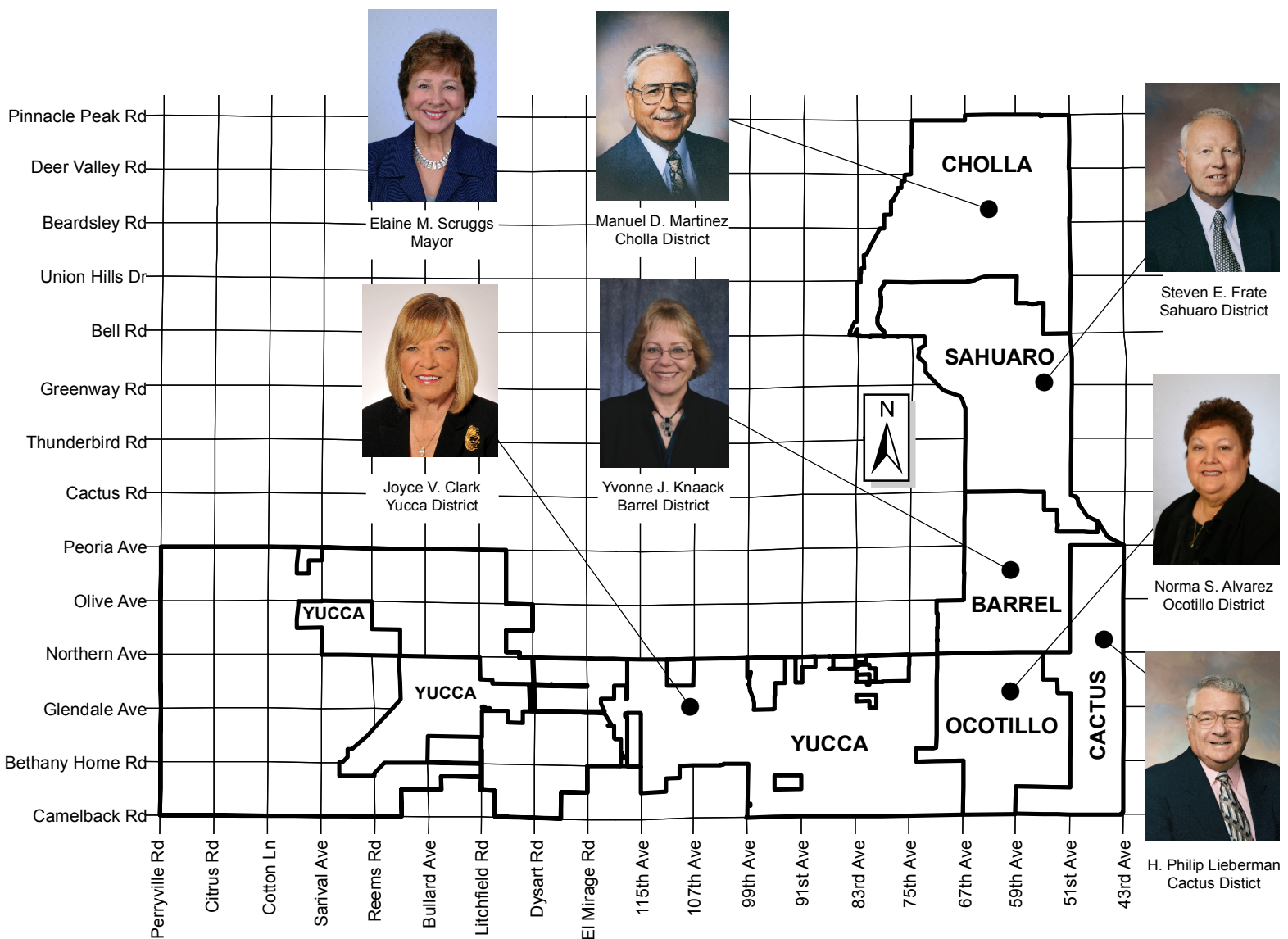
Vice Mayor Steven E. Frate - Sahuaro District

Appointed City Staff

Ed Beasley – City Manager
Craig Tindall – City Attorney
Pamela Hanna – City Clerk
Elizabeth Finn – City Judge



Council District Boundaries





GLENDALE CITY COUNCIL WORKSHOP SESSION
Council Chambers – Workshop Room
5850 West Glendale Avenue
May 1, 2012
1:30 p.m.

WORKSHOP SESSION

1. GLENDALE CITY CODE: CHAPTER 25 (NUISANCES)
PRESENTED BY: Sam McAllen, Code Compliance Director

2. LANDFILL RENEWABLE ENERGY PROJECT
PRESENTED BY: Stuart Kent, Executive Director, Public Works

CITY MANAGER'S REPORT

This report allows the City Manager to update the City Council about issues raised by the public during Business from the Floor at previous Council meetings or to provide Council with a response to inquiries raised at previous meetings by Council members. The City Council may only acknowledge the contents to this report and is prohibited by state law from discussing or acting on any of the items presented by the City Manager since they are not itemized on the Council Workshop Agenda.

EXECUTIVE SESSION

1. LEGAL MATTERS

A. The City Council will meet with the City Attorney for legal advice, discussion and consultation regarding the city's position in pending and contemplated litigation, including settlement discussions conducted in order to avoid or resolve litigation.
(A.R.S. § 38-431.03(A)(3)(4))

2. LEGAL MATTERS – PROPERTY & CONTRACTS

A. Discussion and consultation with the City Attorney and City Manager to receive an update, consider its position and provide instruction and direction to the City Attorney and City Manager regarding Glendale's position in connection with

agreements associated with the area in, near, surrounding or related to the Stadium, Arena and the Hockey Team, which are the subject of negotiations. (A.R.S. § 38-431.03(A)(3)(4)(7))

3. PERSONNEL MATTERS

A. Various terms have expired on boards, commissions and other bodies. The City Council will be discussing appointments involving the following boards, commissions and other bodies. (A.R.S. § 38-431.03 (A)(1))

1. Ad-Hoc Citizen Task Force On Water And Sewer
2. Arts Commission
3. Aviation Advisory Commission
4. Board of Adjustment
5. Citizen Bond Election Committee
6. Citizens Advisory Commission On Neighborhoods
7. Citizens Bicycle Advisory Committee
8. Citizens Transportation Oversight Commission
9. Commission On Persons With Disabilities
10. Community Development Advisory Committee
11. Glendale Municipal Property Corporation
12. Historic Preservation Commission
13. Industrial Development Authority
14. Judicial Selection Advisory Board
15. Library Advisory Board
16. Parks and Recreation Advisory Commission
17. Personnel Board
18. Planning Commission
19. Public Safety Personnel Retirement System/Fire Board
20. Public Safety Personnel Retirement System/Police Board
21. Risk Management/Worker's Compensation Trust Fund Board
22. Western Loop101 Public Facilities Corporation

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- (ii) discussion or consideration of records exempt by law from public inspection (A.R.S. §38-431.03 (A)(2));
- (iii) discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03 (A)(3));
- (iv) discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. §38-431.03 (A)(4));
- (v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- (vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).

Confidentiality Requirements Pursuant to A.R.S. §38-431.03 (C)(D): Any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney by agreement of the City Council, or as otherwise ordered by a court of competent jurisdiction.



CITY OF GLENDALE

Council Communication

Workshop Agenda

05/01/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Sam McAllen, Code Compliance Director

SUBJECT: **GLENDALE CITY CODE: CHAPTER 25 (NUISANCES)**

Purpose

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This is a request for City Council to provide guidance concerning recommended amendments to Glendale City Code Chapter 25 relating to public nuisances.

Background

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A review of current City Code provisions related to barking dogs, odor, and excessive noise were found to need further clarification by the City Court, City Prosecutor's Office, and Code Compliance Department. This matter was discussed at the City Council workshop on October 4, 2011. Council provided input related to animal noise, odor, and excessive noise, and specified that two or more independent witnesses who are not related must be negatively impacted to support public nuisance violations. Based upon the input provided by Council, staff recommends amending Glendale City Code Chapter 25 to clarify the respective provisions.

Previous Council/Staff Actions

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On October 4, 2011, Council provided input regarding proposed amendments of Glendale City Code Chapter 25 relating to public nuisances.

On February 27, 2001, Council adopted Ordinance No. 2186, New Series, addressing dog barking noises, odors and excessive noises.

Community Benefit

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Amending City Code Chapter 25 enhances the city's ability to take enforcement action, if voluntary compliance is not obtained, related to animal noise, odor and excessive noise violations that are negatively impacting Glendale residents.

Policy Guidance

Staff is seeking guidance on recommended amendments to Glendale City Code Chapter 25 relating to public nuisances.



CITY OF GLENDALE

Council Communication

Workshop Agenda

05/01/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Stuart Kent, Executive Director, Public Works

SUBJECT: **LANDFILL RENEWABLE ENERGY PROJECT**

Purpose

This is a request for City Council to provide guidance on a renewable energy project at the City of Glendale landfill proposed by Vieste Energy, LLC.

Background

Vieste Energy, LLC was created to provide services to communities, specifically in the area of renewable energy. Vieste Energy, LLC is actively developing multiple biomass-to-energy and landfill gas-to-energy facilities.

This proposed renewable energy project would divert approximately 90,000-120,000 tons of refuse annually received at the landfill (approximately 40-50% of all refuse received at the landfill) to a waste to energy facility that would be built adjacent to the city's recycling facility. Vieste Energy, LLC has identified a proven technology and partners to develop the project that requires no use of public funds for the construction or operation of the facility. Vieste Energy, LLC will invest \$90 million in capital for the construction of the facility which will generate 12 megawatts of power, equivalent to the annual consumption of 4,500 single family homes.

This project is consistent with the ongoing efforts of the landfill operations to maximize opportunities to improve the financial and environmental impacts of the landfill. With a current landfill life of 40 years, this project could extend the landfill life an additional 10-20 years.

The project will gasify the refuse brought to the facility through a proven process that is already in use in Canada and other countries around the world. Parts of the waste stream that can be recycled, such as metals, will be sorted and marketed separately, with the remainder being used to generate a synthetic gas that can be used to heat steam to power turbines that generate electricity.

Previous Council/Staff Actions

On December 23, 2008, City Council approved an agreement between the City of Glendale, Brian Stirrat and Associates, and Sexton Energy to initiate a methane gas to energy project at the Glendale landfill, and the energy plant began operation in January 2010. The project resulted in \$100,000 in annual payments to the city and allowed for the generation of 2.2 megawatts of electricity equivalent to the power consumed by 750 homes annually.

Community Benefit

This project will provide the city with net revenues of over \$500,000 each year for 25 years and will create 25 new jobs, as well as 75 construction jobs. In addition, the project will offer the city the option to either extend landfill life by as much as 10-20 more years over the term of the agreement or allow the city to bring in additional waste to the landfill with an estimated value of two to three million dollars annually.

Public Input

The technical and environmental aspects of the project will be reviewed in a series of public meetings. Regulatory agencies, including the Maricopa County Air Quality Division and the Arizona Department of Environmental Quality will conduct the public hearings.

Budget Impacts & Costs

Vieste Energy, LLC is solely responsible for all capital investment including construction, permitting and securing the necessary environmental approvals from the regulatory agencies. The city will receive one million dollars annually for 25 years as a host fee (escalating at 1.5% annually), and the city will be charged five dollars per ton by Vieste Energy, LLC for bringing waste to their facility (\$450,000 for 90,000 tons), generating a net revenue of over \$500,000 annually to the city.

Policy Guidance

Staff is seeking policy guidance on a renewable energy project at the City of Glendale landfill proposed by Vieste Energy, LLC.



CITY OF GLENDALE

Council Communication

Workshop Agenda

05/01/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Sam McAllen, Code Compliance Director

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Ed Beasley
City Manager



Attachment Memorandum

DATE: 05/01/2012

TO: Ed Beasley, City Manager

FROM: Sam McAllen, Code Compliance Director

SUBJECT: GLENDALE CITY CODE: CHAPTER 25 (NUISANCES)

1. Draft Ordinance
2. Minutes of the October 4, 2011 City Council Workshop

ORDINANCE NO. _____ NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE CHAPTER 25, ARTICLE II, SEC. 25-24 AND ARTICLE V, SEC. 25-64 RELATING TO ANIMAL NOISES, ODORS AND EXCESSIVE NOISES; AND SETTING FORTH AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That Glendale City Code Chapter 25, Article II, Sec. 25-24 is hereby amended to read as follows:

Sec. 25-24. Miscellaneous.

...

~~(f) No person shall keep a dog within the city limits which is in the habit of barking or howling or disturbing the peace and quiet of any neighborhood within the city. A violation of this subsection shall only be established on the following except that the city prosecutor, in his/her discretion, may waive or require additional evidence as needed on a case by case basis.~~

- ~~(1) At least four (4) persons from separate households directly affected by the nuisance correctly complete and return to the city all petitions, logs and other required documentation;~~
- ~~(2) The city prosecutor approves all petitions, logs and other required documentation and following review of all material evidence, it is determined that reasonable grounds exist to successfully prosecute;~~
- ~~(3) The persons whose names are listed on all petitions, logs and other required documentation provide sworn testimony.~~

(f) No person shall keep or harbor any animal that by frequent or habitual barking, howling, yelping, crowing or the making of other noises disturbs the peace and quiet of two or more independent witnesses who are not related. For purposes of this section, "animal" means any bird or non-human mammal.

...

~~(i) All property shall be kept free of noxious or objectionable stench or odors. A violation of this subsection shall only be established on the following except that the city prosecutor, in his/her discretion, may waive or require additional evidence as needed on a case by case basis.~~

- ~~(1) At least four (4) persons from separate household directly affected by the nuisance correctly complete and return to the city all petitions, logs and other required documentation;~~
- ~~(2) The city prosecutor approves all petitions, logs and other required documentation and following review of all material evidence, it is its determined that reasonable grounds exist to successfully prosecute;~~
- ~~(3) The persons whose names are listed on the required documentation provide sworn testimony.~~

(i) All property shall be kept free of noxious or objectionable stench or odors that disturb the sense of smell of two or more independent witnesses who are not related.

SECTION 2. That Glendale City Code Chapter 25, Article V, Sec. 25-64 is hereby amended to read as follows:

Sec. 25-64. Excessive, unnecessary or offensive noise prohibited.

~~(a) It shall be unlawful for any person to make or continue, or cause or permit to be made or continued, any excessive, unnecessary or offensive noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any two or more reasonable persons of normal sensitivity residing in the area.~~

(a) It shall be unlawful for any person to make or continue, or cause or permit to be made or continued, any excessive, unnecessary or offensive noise that disturbs the peace and quiet or that causes discomfort or annoyance to two or more independent witnesses who are not related.

...

SECTION 3. That the provisions of this ordinance shall become effective thirty (30) days after passage of this ordinance by the Glendale City Council.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

c_nuisance_noise&odor.doc

***PLEASE NOTE: Since the Glendale City Council does not take formal action at the Workshops, Workshop minutes are not approved by the City Council.**



**MINUTES OF THE
GLENDALE CITY COUNCIL WORKSHOP SESSION
Council Chambers – Workshop Room
5850 West Glendale Avenue
October 04, 2011
1:30 p.m.**

PRESENT: Mayor Elaine M. Scruggs, Vice Mayor Steven E. Frate and Councilmembers Joyce V. Clark, Yvonne J. Knaack, H. Phillip Lieberman, and Manuel D. Martinez,

PARTICIPATING: Councilmember Norma S. Alvarez (via telephone)

ALSO PRESENT: Ed Beasley, City Manager; Horatio Skeete, Assistant City Manager; Craig Tindall, City Attorney; and Pamela Hanna, City Clerk

WORKSHOP SESSION

1. GLENDALE CITY CODE CHAPTER 25 REVISIONS

PRESENTED BY: Elizabeth Finn, Presiding City Judge
Jim Colson, Deputy City Manager
Sam McAllen, Code Compliance Director

This is a request for City Council to provide guidance concerning recommended revisions to Glendale City Code Chapter 25 relating to public nuisances.

Glendale City Council adopted Ordinance No. 2186, New Series, on February 27, 2001, addressing dog barking noises, odors and excessive noises.

The current City Code provisions contain language related to requirements for judicial prosecution of violations. No other place in the Glendale City Code requires the submittal of a petition to the City Prosecutor.

The recommended revision clearly identifies the elements of a violation of the City Code provisions for the public, prosecutor and judiciary.

Voluntary compliance with City Code provisions is the goal of the Code Compliance Department. In addition to enforcement action, the department educates violators regarding code requirements and offers Glendale's Community Mediation Program as an alternative solution.

The Court, City Prosecutor's Office and Code Compliance staff have met and recommend these revisions to City Code, which will enable the city to take enforcement action in cases where animal noise, odor, and excessive noise violations are found to exist.

On December 16, 2008, the Code Review Committee recommended modifying the dog barking code to include noises made by any animal.

On February 27, 2001, Council established current code language addressing dog barking, odor, and excessive noise violations.

Amending Chapter 25 enhances the city's ability to take enforcement action related to animal noise, odor and excessive noise violations that are negatively impacting Glendale residents. This will allow the city to be responsive to residents reporting animal noise, odor, and excessive noise violations.

Staff is seeking guidance on the revisions to Glendale City Code Chapter 25 relating to public nuisances.

Jim Colson, Deputy City Manager, presented a brief summary of the agenda item. He stated staff was present to bring forward for discussion and guidance a revision to the code pertaining to barking dogs. He explained that from an historical perspective, the recommended revision language being brought forward today is based on input from the Code Review Committee of the City Council, the Criminal Justice Users Group and a benchmark analysis of how this issue is being addressed by surrounding cities. As a matter of business practice, staff is systematically reviewing the code and will bring to Council recommendations for discussion and direction as appropriate. He noted key elements that will be discussed include: expanding the provision to include animals, not just dogs, and clarifying language identifying the violation and outlining notification. In addition to the barking dog code provision, recommendations are being made to revise two additional code provisions to ensure clarity and consistency within the code – specifically excessive noise and odor and to create a process that is focused on effective resolution. This effort includes: providing clear direction as to what constitutes a violation of the code, outline a specific path to file a complaint ensuring that effective notification occurred, clarify the process and expectations, create and enhance an environment that is seeking alternative and more neighbor-friendly remedies to these issues, and focus on communication, education and mediation prior to legal action proceeding.

Elizabeth Finn, Presiding City Judge, stated that the process is being done so people will be aware of what is required. The first City Code provision currently only applies to barking dogs. However, based on analysis and a review of other cities' code provisions, it is the recommendation that this provision apply to more animals than just noisy dogs.

Councilmember Knaack asked if this revision included birds. She noted there have been some issues in her district regarding birds making excessive noise. Judge Finn explained the revised language states specifically, “animals, birds and non-human mammals”. This language was obtained from Animal Control who are the experts in this area. She explained that this revision clarifies that the complaints must be from members of three separate households. She explained this was a policy decision that will be left up to Council. She provided an example of what Phoenix was currently doing, which was similar to what staff was proposing.

Councilmember Martinez asked if other cities in the valley only require two complaints from separate households. Judge Finn explained that Tempe requires three and Gilbert requires two in their codes. She noted this provision can be put two different ways, either the prosecutor has total discretion as to policy or the Council can indicate policy by incorporating it into the code. She noted staff left households in the ordinance since it was already in the existing ordinance.

Councilmember Martinez asked if the offender is given the opportunity for mitigation after the third complaint. Judge Finn stated the next presenter will cover that part.

Mayor Scruggs said she would like to comment on the number of people and she did have some concerns with this one-size-fits-all approach. She said look at Councilmember Clark’s district with a large number of properties with large acreage. In order to find three people, all in the neighborhood that would agree on a complaint could have a person about ready to lose his/her mind over this whole thing. The Sahuaro District also has a lot of large acreage, also she could think of places in the Cholla district which back up to Thunderbird Park. So, now you’re trying to find somebody way down the street. When she read this, she had a lot of trouble with this three people thing. She didn’t know if the city wanted to use something that has to do with distance or what.

Mayor Scruggs said Sam McAllen, Code Enforcement Director, knows the Mayor’s office has been the repository lately of people who are getting no relief anywhere, because they call in complaints and they’re told, “Well there is this ordinance being worked on but it’s coming forward, and we don’t know when”. She said she read in the Council Communication that it’s been worked on since 2008 and she continued noting people are very upset right now. In the process of them complaining, they keep getting told they’re getting no relief because the legal department hasn’t finished the ordinance or code compliance or whatever it was. These people are going nuts...there has to be some way to recognize the fact that these people’s quality of life is severely diminished. And there is one other place in here that she read that the three complaints must come in and that’s for the smells, the odors. She thought that it was very unreasonable to find three people in a row that smell what you smell day and night especially in areas of large acreage.

Councilmember Clark agreed with Mayor Scruggs’ comments. She asked Judge Finn how a neighborhood was defined in the criteria. Judge Finn explained it was up to the Council to define the criteria. She stated it could be the number of people or the number of people within households or both. She reiterated this was a policy decision on which staff was looking for direction from the Council. She noted the number can be reflected in the code revision or be left up to the discretion of the prosecutor.

Councilmember Clark commented on the complaints she has received from constituents who were at their wits end in trying to find some relief from their problems only to be given the run around. She remarked she had serious concerns with the number of households that will be seen as the bible, with no other recourse. She provided an example of someone taping the continuous barking noise and won their case in court. She stated she was afraid the bar will start so high that, in most cases, the complaint would be turned down.

Vice Mayor Frate stated he liked having three people or more from two separate households. He believes it will address the concern of that individual faster and address feuding neighbors which he believes was not the standard. He explained the first step would be a visit from code, mitigation and the last step was court.

Mayor Scruggs agreed with Councilmember Clark's comment about there being this bright line and that's going to be the bar and if you don't meet that definition then you don't get to go any further in having your issues resolved. She added as Vice Mayor Frate noted there are few exceptions where there are feuding neighbors, that's not the rule. There are too many situations where having a number in the code will close off somebody's opportunity to have any relief whatsoever. Mayor Scruggs continued that she is talking about something that is one of the most precious things you have and that's the right to have peace in your own home and in your own yard. She gave several examples of situations that would make it difficult for a homeowner to get a required number of neighbors' signatures on a complaint.

Mayor Scruggs said unless there was a provision that allows some leeway, she couldn't go with this. She didn't care whether it's two people in one house and one in another or three in separate houses with regard to the complaints. She thought putting a definitive number that draws the lines so staff can say "well you don't meet the criteria so therefore you just have to live with it" was not something that she wanted to do. She continued that perhaps this should have come to Council for discussion previously. In fact a lot of these codes that are being changed probably should come to Council first before drafting the final product because Council were the ones that have to listen to the constituents and what was going on in their lives. She stated that people should not be subjected to this kind of tyranny by having situations going on in their neighborhood that nothing can control. She didn't know the answer, but she couldn't support having numbers of people.

Councilmember Knaack commented that she and Councilmember Clark were on the Code Review Commission and remembered they had discussed having two people or two households. Therefore, she was surprised when she read this new version. She explained that they so strive to protect the offenders more than protecting the victims. She agreed with Mayor Scruggs.

Councilmember Alvarez commented that she finds in reading the ordinance and the changes, that they seemed almost the same. She stated the complaints she had received were that the laws were not being enforced. She remarked on the farm smell along 75th Avenue and how the laws now are not being enforced. She questioned the changes when the existing laws were not being enforced. Mr. Craig Tindall, City Attorney, stated staff has worked to draft an ordinance that was enforceable. He added they believe this ordinance is enforceable and will be followed. Councilmember Alvarez inquired why wasn't the existing ordinance being enforced when it's very similar to the one being proposed.

Councilmember Clark remarked it was her belief that prosecutors will not take on a case unless they feel it is rock solid. As a result, they turn away a lot of these cases and these complaints because they do not feel the case is winnable. She believes this goes to the heart of what Councilmember Alvarez is saying regarding prosecuting a case and upholding the law. Mr. Tindall explained that cases are evaluated on a case-by-case basis and the evidence that is available. They always need to look at the facts of the case relative to the law and determine

whether they can prove a case in court. Councilmember Alvarez inquired about the case of numerous complaints on 75th and Northern as well as Bethany Road. She inquired why nothing has been done or even if it can be done.

Mayor Scruggs asked for clarification as to whether Councilmember Alvarez was talking about the smell that's coming from a farm or agriculture operation that is either legal or non-conforming legal versus a house? Because we are talking about smells coming from private homes.

Judge Finn stated that zoning has priority over these ordinances zoned for rural. She noted that odors that are expected to come from rural zoning were not going to be affected by this.

Mayor Scruggs asked Councilmember Alvarez was the odor coming from a rural use in rural zoning versus a household?

Councilmember Alvarez stated the complaints were coming from households but they were in regards to farms.

Mayor Scruggs responded so this ordinance then will not apply in any case because they are using their property the way they have the legal right to use it. She continued getting back to the issue that was raised whether a prosecutor will take things forward or they won't and she asked if Judge Finn wanted to speak to that.

Judge Finn explained the existing ordinance says "four persons from separate households." The bar is set very high. She noted that was the reason why the recommendation was three households. However, if Council decides to make it one or more households, or one person, or one or more persons, that would be totally up to Council. However, if the Council makes it one or more persons, they might be creating an expectation on the part of the complaining public, that one person is sufficient.

Mayor Scruggs said but it goes back to balance again. She continued that as Councilmember Knaack said, the city tends to go in favor of the offending party and the victim remains a victim. She questioned, how do you find balance? She continued that she understood that the city didn't want to set up a situation where it's so easy for someone to call in a complaint and expect that their neighbor is going to have a lot of legal trouble, but how does the city balance the right of that person to really have a fair chance at having a situation corrected, that is truly beyond what they should have to live with.

Judge Finn stated that in a review of civil ordinances in other jurisdictions, the majority of them do not mention a specific number of households. They fall back to the prosecutor's criteria. She reiterated this was up to Council and staff was only providing a recommendation.

Mr. Tindall commented there was a difference in the law of nuisance between public nuisances and private nuisances. A private nuisance is a nuisance between two individuals and the law of nuisance in respect to ordinance was clear that in a city and town, police powers relate to public nuisances. He believes most of the ordinances that don't prescribe a particular number of people, don't prescribe one either. Therefore, three or more makes the argument easier that it's a public nuisance and is more beneficial from a prosecution standpoint. He added that it was not within the municipal police powers, with respect to law of nuisance, to regulate every single individual private nuisance that occurs, because there are civil means of remedying those.

Mayor Scruggs commented that the city ran into a situation many, many years ago with regard to spacing of group homes and how many group homes should be allowed in a neighborhood or on a street. There was a provision about so many within a quarter mile, which became a serious

issue. The city has many neighborhoods where the homes are a quarter mile apart; she listed several areas throughout the city as an example. If the city requires three neighbors for a complaint and your next neighbor is a quarter of a mile away and the next one after that is a half a mile away then you might say “well maybe they’re a half mile away, they’re not annoyed by the dog that yelps itself crazy for six hours a day but you’re still having a miserable life living right next door”. She continued that numbers makes it easier for the prosecutor, but that definitiveness makes it very hard for the person whose life is being made miserable. She was looking for some balance. She noted the group homes were a serious issue because the group homes could not be closer than a quarter mile apart. In Secluded Acres, the group homes could have been all right down the row because the houses were a quarter mile apart.

Judge Finn provided an example of the Peoria ordinance. She explained that Peoria talks about one or more adjacent property owner. She noted that Gilbert talks about a neighbor or two people passing to and from and upon the public streets or sidewalks. However, it has to be at least two complaining witnesses from separate households.

Judge Finn stated she realizes that council was struggling with the number aspect; however, she would really like to be able to resolve this today and bring this to Council for approval in order to clarify this ordinance to both parties.

Councilmember Lieberman stated he did not like the one or more since he believes some neighbors might use this when they do not like a certain neighbor. He believes that having three persons from separate households was the best option and the most fair.

Councilmember Martinez commented on private nuisances. He believes having at least two or more people separately should be considered an option. However, he did not know what the magic number should be.

Mayor Scruggs said Peoria having one was evidently working for them. She asked if their prosecutor reported a lot of trouble or too much work, etc. Judge Finn explained the prosecutor’s criteria is, even though Peoria says one or more adjacent property owner, the prosecutor still requires three or more unrelated persons from separate households.

Mayor Scruggs asked how they can ignore their city code. Mr. Tindall explained that the prosecutors can only bring cases that are substantiated under the law. He added there was a substantial body of case loads dealing with nuisances. As a result, ordinances that don’t comply will run into trouble, be challenged and left without the ability to prosecute.

Councilmember Clark stated she had no problem including all animals. The whole Council was in agreement. She noted that the Council’s dispute now was the number of households. She believes after listening to Mr. Tindall’s comments, they have no choice but to specify two households. She explained this sets the bar in favor of the victims of this ongoing problem. She reiterated they should keep households in and define the number.

Mayor Scruggs said she had been thinking about this Gilbert situation and someone walking by and complaining. She commented the situation could be something very different than somebody walking by, it could be people who back up to a golf course and people hear the dog barking which causes significant disruption for something they have paid a lot of money to do; it could be somebody backing up to a church, which wouldn’t be a household, which has a school in it. There are a number of situations where people can be victims of barking dogs that aren’t necessarily houses. Mayor Scruggs said she thought the word household was a limiter.

Councilmember Martinez asked Mr. Tindall if including two households would make it enforceable in his view. Mr. Tindall explained that there was not a specific number. He noted the deciding factor was the evidence that could be used in court by the prosecutor.

Mayor Scruggs asked Mr. McAllen to talk to the issue of evidence. What if somebody produces a tape recording and says I don't have the three people but here, listen what goes on day after day?

Sam McAllen, Code Compliance Director, stated that prosecutors do accept audio and video tapes when someone is saying there is an alleged violation and it is considered evidence. He added the prosecutors also require a log documenting when the offending smell or noise is present.

Mr. Colson explained staff realized that this was a highly difficult issue in terms of the relationships between neighbors, code, court and prosecutors. However, based on input from the Code Review Committee and on-going complaints, staff deemed it important to bring this to Council for consideration. He stated that staff is attempting to provide a path to resolution. He added staff was seeking Council's direction and guidance. .

Mr. McAllen stated voluntary compliance is the goal of the Code Compliance Department and is the expectation of the public. He noted that in most cases the Department is able to resolve complaints without resorting to legal action due to our focus on communication, education, and mediation. He explained when addressing reported barking dogs, odor, and excessive noise complaints, the Department first communicates with the alleged offender to educate them on the City Code provisions. Many times, compliance is obtained at that point. Some complainants state they are not comfortable approaching their neighbors about the situation, therefore Code Compliance provides the service of communicating with the neighbor. He stated his office sends an educational letter to the reported violator informing them of the complaint and about city code requirements. In cases where a barking dog violation is reported, they include a copy of the Barking Dog brochure to provide possible solutions to resolve the matter. He explained that many times staff personally visits the alleged violator to answer questions and clarify steps needed to resolve the violation. Staff also provides similar education when receiving complaints about odor and excessive noise concerns. He stated they also recommend mediation, when appropriate, to try to resolve the matter at the lowest level possible. He noted that only after all of the above efforts have failed in obtaining compliance does code refer these matters to the Prosecutors Office. He stated that subject to the guidance provided today, staff planned to bring this item back to the Council in a regular session for approval and adoption of the revised City Code provisions related to Animal Noise, Odor and Excessive Noise.

Mayor Scruggs said obviously, several of the Councilmembers are agitated about this because they have been dealing with this issue in one way or another. In my office, which is generally the place of last recourse after they've gone through everybody else's offices, there have been some interesting cases come forward lately and some very unhappy citizens. And in each of those instances, Mr. Mc Allen has personally gone out and talked with them and made a difference. She and her office appreciated and certainly the citizens appreciated Mr. McAllen's personal and direct assistance in the way he goes about talking with the people and helping even those who felt they'd never have any resolution. They have new hope, which is very important. The only reason why any of Council was upset here today was because the constituents we

represent are upset. Mayor Scruggs thanked Mr. McAllen and wanted to make sure that everybody recognizes his personal efforts and his personal demeanor and way of approaching things was the right way and was appreciated by our constituents, and certainly she and staff and the Mayor's office.

Councilmember Clark remarked on the Code Sub-Committee she was on with Councilmember Knaack. She explained the committee came up with some ideas for an ordinance with regards to barking dogs. She noted that Mr. Colson had stated that part of those recommendations were unenforceable. She asked what those parts were. Mr. Colson explained as he understood there was an obligation on the part of the prosecutor to determine whether the petitions were sufficient, not whether it met the elements of the provisions as they existed; therefore when it went forward it was determined to be unenforceable as it proceeded through the court system.

Judge Finn read from the current ordinance to provide further clarification. Councilmember Clark remarked she still did not know what was wrong with the provisions. She asked why the provisions were not sufficient or if they were not robust enough. Judge Finn explained a person could say they were not given sufficient notice by the ordinance as to what is required to bring forth the complaint and notice could be said as deficient as what facts needed to occur for a person to be charged. She added when you have a phrase that says "the prosecutor decides whether or not additional evidence is essential", that does not give notice to the complainant or to the person who is charged. She noted all of that language is in their proposal and that language was eliminated. Councilmember Clark explained her concern was the prosecutor was left to interpret what Council's intent was of the ordinance. She would like to include enough specificity in the ordinance so that the prosecutor knows what the Council's intent is and not make up a new set of policies to interpret what their intent was.

Mr. Tindall stated that prosecutors don't stray, they know what the law is and are very careful and they do prosecute if they believe it has a benefit to the community. He added there were two aspects to any case, facts and law. He noted prosecutors understand very well what the law is because the statutes are very carefully drafted before they become law. However, the facts were another situation; those are worked on a case-by-case basis. He added the recommendations have been carefully drafted and are sufficient for the prosecutors to be able to do their jobs and maintain prosecutorial discretion.

Councilmember Martinez asked if it would help if they approve two or more households. Mr. Tindall stated it would depend on the circumstances. He reiterated there was not a magic number and it all depends on the situation. He added that two would certainly help a prosecutor in determining a case; however, there was no magic number that decides a case moving forward.

Mayor Scruggs said she wanted to further discuss other types of places, not households, where people gather on a regular basis and that a dog left outside barking all day long will disrupt the business or the activity or the enjoyment of places adjacent to that dog barking. She wanted something other than household in the code or something in addition to households to address these issues.

Mr. Tindall stated they could reverse the language to say “three or more persons not from the same household” and that allows any other person whether it’s business or anything else to come in. It eliminates the group, but allows everybody else to come in instead of defining the group itself.

Mayor Scruggs asked could it have an explanatory statement that people do not need to reside in household in the vicinity to complain. She thought there should be something that allows people using adjacent property to complain. She knew it would be limited to facilities or recognized gathering places for people. She was concerned if the provision refers to households and if you’re not from a home in the neighborhood, the city’s not going to pay attention to you and that’s just wrong.

Mr. Tindall stated they will work on language that accomplishes the same purpose without a lot of difficulty.

Councilmember Alvarez stated if an individual makes a complaint, it should be up to the individual to present a complaint to the prosecutor. She noted only after that should they come in as a neighborhood with two or three more individuals. She explained that after the complaint, it was the job of the prosecutor to see if there was a case or not. She supports having one person and then the prosecutor deciding if there is a case or not.

Mayor Scruggs said staff was going to go back and draft something else. She asked the Council if they had settled on two people or no people.

Judge Finn stated what she understood at this point, was that they have settled on three independent witnesses who are not related and not from the same household. She explained that would address the Mayor’s concern of what if someone was in a park or something that was not a household. She added they could also drop it down to two witnesses not from the same household. She reiterated that if they decide not to put a number in there, it will always have to be left up to the prosecutor and what they decide.

Mayor Scruggs asked why are you saying, three not from the same household? Why is it that a mother and her child or a husband and wife or two brothers-why is it that two people in the same household don’t have a right to say “this is driving us nuts- we can’t study-we can’t sleep- we can’t use the backyard” or whatever? Once the City goes to three and then you say, not from the same household, it’s going to make the job easier for the prosecutor, but it’s not advancing the cause of the citizens and that’s her personal opinion. So why does the City have to have three not from the same household?

Mr. Tindall explained that it did become an easier standard to prove when you have independent parties. He noted they were looking for someone that was independent that will help substantiate someone’s claim.

Councilmember Clark stated that made sense and inquired why that language was not already being used. She noted that having the language state that two independent persons will

collaborate the issue independently, solves a lot of issues for her. Judge Finn stated they could certainly use that language. She noted they will work on that language.

Horatio Skeete, Assistant City Manager, stated staff has heard Council's concerns and staff has enough to go back and work on drafting some revised language that could possibly address some of the issues.

Mayor Scruggs said she thought that was fair and the best way to approach this at this point. Councilmember Knaack commented on the barking dog that disrupted her business. She agrees with Mayor Scruggs that this should address all areas with barking dogs and odors, not just households.

Mayor Scruggs agreed over the years, Glendale developed with neighborhoods right next to commercial centers and the City really has to think about that and the ability to do business and so forth.

Councilmember Clark commented on feral cats and asked whether the city will be addressing this issue any time soon. Judge Finn stated the Criminal Justice Users Group meets every month and they could evaluate this problem. She noted the group included code, a prosecutor, detention, and the court.

Mayor Scruggs asked if there was discussion on topics that Councilmembers are dealing with like the feral cat issue, can a member of the Council staff or the Mayor's office sit in and observe? Or would that not be productive? Judge Finn noted that anyone was welcome to attend.

Vice Mayor Frate commented that the majority of the people do comply with code and there was only a small percentage with whom they really needed to work. He explained that most complaints are resolved by a simple visit from code.

As no further business was discussed, Mayor Scruggs adjourned the meeting.

ADJOURNMENT

The meeting was adjourned at 3:00 p.m.



CITY OF GLENDALE

Council Communication

Workshop Agenda

05/01/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Stuart Kent, Executive Director, Public Works

SUBJECT: **LANDFILL RENEWABLE ENERGY PROJECT**

Purpose

This is a request for City Council to provide guidance on a renewable energy project at the City of Glendale landfill proposed by Vieste Energy, LLC.

Background

Vieste Energy, LLC was created to provide services to communities, specifically in the area of renewable energy. Vieste Energy, LLC is actively developing multiple biomass-to-energy and landfill gas-to-energy facilities.

This proposed renewable energy project would divert approximately 90,000-120,000 tons of refuse annually received at the landfill (approximately 40-50% of all refuse received at the landfill) to a waste to energy facility that would be built adjacent to the city's recycling facility. Vieste Energy, LLC has identified a proven technology and partners to develop the project that requires no use of public funds for the construction or operation of the facility. Vieste Energy, LLC will invest \$90 million in capital for the construction of the facility which will generate 12 megawatts of power, equivalent to the annual consumption of 4,500 single family homes.

This project is consistent with the ongoing efforts of the landfill operations to maximize opportunities to improve the financial and environmental impacts of the landfill. With a current landfill life of 40 years, this project could extend the landfill life an additional 10-20 years.

The project will gasify the refuse brought to the facility through a proven process that is already in use in Canada and other countries around the world. Parts of the waste stream that can be recycled, such as metals, will be sorted and marketed separately, with the remainder being used to generate a synthetic gas that can be used to heat steam to power turbines that generate electricity.

Previous Council/Staff Actions

On December 23, 2008, City Council approved an agreement between the City of Glendale, Brian Stirrat and Associates, and Sexton Energy to initiate a methane gas to energy project at the Glendale landfill, and the energy plant began operation in January 2010. The project resulted in

\$100,000 in annual payments to the city and allowed for the generation of 2.2 megawatts of electricity equivalent to the power consumed by 750 homes annually.

Community Benefit

This project will provide the city with net revenues of over \$500,000 each year for 25 years and will create 25 new jobs, as well as 75 construction jobs. In addition, the project will offer the city the option to either extend landfill life by as much as 10-20 more years over the term of the agreement or allow the city to bring in additional waste to the landfill with an estimated value of two to three million dollars annually.

Public Input

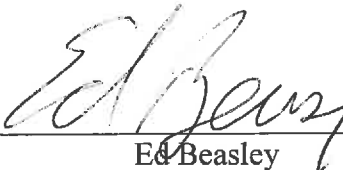
The technical and environmental aspects of the project will be reviewed in a series of public meetings. Regulatory agencies, including the Maricopa County Air Quality Division and the Arizona Department of Environmental Quality will conduct the public hearings.

Budget Impacts & Costs

Vieste Energy, LLC is solely responsible for all capital investment including construction, permitting and securing the necessary environmental approvals from the regulatory agencies. The city will receive one million dollars annually for 25 years as a host fee (escalating at 1.5% annually), and the city will be charged five dollars per ton by Vieste Energy, LLC for bringing waste to their facility (\$450,000 for 90,000 tons), generating a net revenue of over \$500,000 annually to the city.

Policy Guidance

Staff is seeking policy guidance on a renewable energy project at the City of Glendale landfill proposed by Vieste Energy, LLC.


Ed Beasley
City Manager